INTERNATIONAL COURT OF JUSTICE (ICJ) AND ITS ACTUAL POWER – A HISTORIC PERSPECTIVE

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Abstract

It is well known that most prestigious international jurisdiction is from the International Court of Justice (ICJ). Often there is reference to "international justice" and "war crimes" and the association is made tothe International Criminal Tribunal For the former Yugoslavia (ICTY), established in 1993 by the United Nations Security Council.Just as the United Nations is the heir of the League of Nations, the International Court of Justice is that of the Permanent Court of International Justice (PCIJ), established in 1922. However, as early as in December 1939, the weakness of the Court was recognized by its President himself, when he stated that, "It is the goodwill of governments, their willingness to submit to the law … that ultimately depends on the exercise of universal jurisdiction." In the recent KulbushanJadhav case, the ICJ stayed the order to execute him by Pakistan authorities till the final verdict is proclaimed. However, reports have arrived that many in Pakistan are calling on the government to go ahead with the execution regardless of what the ICJ says. This exposes the weakness of the court itself and it is proposed that the decision of the court should be mandatory and binding.

Keywords:- ICJ, war crimes, United Nations, International Relations

Introduction

It is remarkable that today the expressions of "international justice" and "war crimes" are very often associated with one another and that "the Hague Tribunal" almost always refers to the International Criminal Tribunal For the former Yugoslavia (ICTY), established in 1993 by the United Nations Security Council. The identification between international justice and international criminal justice thus seems self-evident in the press as well as in sociological, historical and political literature. It is not natural, however, since the most ancient and in many respects the most prestigious international jurisdiction is from the International Court of Justice (ICJ), also based in The Hague. [1]

Around the international criminal jurisdictions, large-scale mobilisations are being organized; it was essentially done by denouncing "war crimes" that the "Nuremberg law" was reinvented in the American protest against the Vietnam War. Conversely, a non-legal study of the International Court of Justice, which is also much more scarce in the media, would be sought in vain. By its "general" competence, which enables it to deal with maritime delimitation cases as well as allegations of genocide, the weight of its jurisprudence, the professional prestige attached to sitting or pleading before it The ICJ is indeed a judicial centre, by analogy with the notion of political centre developed in the theories of political development [2]. It remains to specify the relations between this centre and its periphery or the new centres that emerge: the multiplication of international jurisdictions, that no appeal or cassation procedure binds each other.

In order to clarify these dynamics and the position of the International Court of Justice in the judgment of "crimes that shock the conscience of humanity", a formula now well established in international legal discourse, attention must be paid to the constitution of causes of international justice and the construction of international judicial cases. After analyzing the Court 's structural weakness, it will be shown how two relations to law and international justice have been constituted and differentiated, one in the judicial mobilization of the ICJ and then in mobilizations for international criminal justice.

A weak judicial centre

Just as the United Nations is the heir of the League of Nations, the International Court of Justice is that of the Permanent Court of International Justice (PCIJ), established in 1922; The "Statutes" of the two Courts are almost the same. The creation of the PCIJ is the fruit of a mobilization without fulfilment, related to the genesis in 19thcentury to the cause of peace through law, brought to the United States

[1]AnneteWiviorka, The Trial of Nuremberg

[2]BertranBadi, Political Development .

especially the nebula peace movement and most professional circles the arbitration movement [3]. This cause finds a relay at the top of the republican administration; Elihu Root, Secretary of State from 1905 to 1909, is one of his champions. Confirmed in their commitment by the effective development of arbitration between states since the end of the century, these pacifist jurists hope to substitute justice for war. The Court's wishes should be such as to "legalize" the practice of arbitration and ensure the consistency of decisions rendered.

In 1920, under the auspices of the League of Nations, an Advisory Committee of Jurists was established, comprising ten members (including Elihu Root), to prepare a draft statute for a Permanent Court of International Justice. One of the fundamentals of the project is the "compulsory jurisdiction" of the Court, such that a State cannot refuse to be sued by another. The decision-making organs of the League replace it with an "optional clause of compulsory jurisdiction": the jurisdiction of the PCIJ shall be compulsory only for those States which so wish. As noted by James Brown Scott, founder of the American Society of International Law in 1906 and legal advisor to Elihu Root during the Committee's work, it was obviously preferable to have an arbitral court rather than a court of justice in the strictly technical sense of the term [4]. For its early defenders, the new Court is therefore not quite a true Court: it keeps a family air with the cour[2]ts of arbitration; In any case, it moved to The Hague at the Palais de la Paix. Despite this inherent weakness, PCIJ was particularly active in the 1920. While this status stipulates that its decisions "are binding only on the parties and in this case was decided [5] its statusas Permanent Court of International Justice". Although it can formally establish a "precedent", the Court plays a central role in the "development and clarification of the rules and principles of international law [6]. It reinforces the "certainty" of a right without a true [3]legislator and has never been codified.

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[3]
David S. Paterson, "The United States and the Origins of the World Court", p. 279-295.
[4]
James Brown Scot, "A Permanent Court of International Justice", The American Journal of International Law.
[5]
Statute of the Permanent Court of International Justice, Art. 59. The article was added by the Council of the League to the draft of the Committee of Jurists.
[6]
HerschLauterpacht, The Development of International Law by the International Court , London: Stevens & Sons Limited, 1958, p. 5.
[7]
Guillaume Sacriste and Antoine Vauchez, "War outlaw, 1919-1930. The Origins of the Definition of an International Political Order ", p. 101-117.
[8]
Sixteenth Report of the Permanent Court of International Justice (15 June 1939-31 December 1945) , Publications of the Permanent Court of International Justice, Series E, 16, p. 8.
[9]

Any hope of guaranteeing peace through justice has not disappeared with the rejection of the draft "compulsory jurisdiction". Several States recognize it, several treaties stipulate that the parties accept it for questions relating to their interpretation and execution; The Court is often seized with the establishment of an international loyalty at the crossroads of national allegiances [7]. In December 1939, the weakness of the Court was recognized by its President himself: "It is the goodwill of governments, their willingness to submit to the law what can and must be exempted from arbitrariness and violence, that ultimately depends on the exercise of universal jurisdiction."[8]

It is not only the cause of international justice that loses its credibility with the experience of the dark years, but also "international law", also born as a cause to be defended, that of "sovereign power Of the law." Hans Morgenthau's background in this respect is exemplary: a lawyer, an expert in international litigation, he emigrated to the United States in 1937 and redirected his efforts towards the construction of a new discipline, the "International Relations" of which he became the founding father. The end of the Second World War opened a new period of enthusiasm, quickly closed by the beginning of the Cold War. In 1961, Stanley Hoffmann observed that tensions between West and East and the emergence of new states led to a challenge to the rules of international law, "the decline of the International Court and a general revolt against international justice." [11]. The "International Relations" is largely autonomous by turning its back on international law, considered politically insignificant. In the 1970s, The World Court was sometimes called "the Court without a case."

Since the late 1980s, on the contrary, It has become more active than ever. Despite this turning point and the taste that the International Relations Scholars adopted in international law in the 1990s, it remains ignored by the social sciences. It is true that since 1922, when 30,000 proceedings were brought before various international bodies in total, it has known only about 150 cases [12]. How to characterize this "international law" which defines the jurisdiction of the Court? It is first and foremost a right of professors. It is remarkable that, even today, the States appearing before the ICJ, represented by an "agent" (usually a diplomat in The Hague or a legal adviser in the Ministry of Foreign Affairs), are always

Permanent Court of International Justice, Advisory Committee of Jurists, Minutes of the meetings of the Committee (16 June-24 July 1920) , The Hague, Van Langenhuysen Frères, 1920, p. 5.

[10]

Hans Morgenthau, "Positivism, functionalism, and international law", American Journal of International Law , 34 (2), 1940, p. 240.

[11]

Stanley Hoffmann, "International Systems and International Law", World Politics , 14 (1), 1961, p. 228.

[12]

Karen Alter, "Private Litigants and the New International Courts," Comparative Political Studies , 39 (1), 2006.

assisted by "Advice", all, or almost all, of the professors. Since the mid-1980s, some have intervened in more than one third of the proceedings before the Court; Many of them are members of the United Nations International Law Commission (ILC), which is responsible for developing projects for the codification and development of international law.

It is then a right of diplomatic lawyers. Doubtless, as international relations became legalized, the role of senior officials increased. The case of France is exemplary: the simple post of jurisconsult-conseil at the Ministry of Foreign Affairs created in 1890, occupied by an academic in addition to his teaching activities, gradually changed into 1969 legal Directorate [13]. The growing importance of administrative expertise in international law can be found in the profiles of French ICJ judges: Professor Jules Basdevant (1946-1964), Professor André Gros (1964-1982), Guy Ladreit de Lacharrière.

The ICJ judges hold the highest post of responsibility and there is a definite criteria laid down for their selection. The judges should possess the high moral character. They are qualified to be appointed to the highest judicial post in their country and while appointing the judges equitable geographical distribution is also considered. It is also ensured that they represent main civilizations and principal legal systems of the world. No two persons can be appointed from the same country.

KulbhushanJadhav Case

May 18, 2017 appeared to be a good day for India as the argument presented by the eminent lawyer from India, Harish Salve helped ICJ tostay the earlier Pakistan court's order of execution of the alleged "terrorist" KulbhushanJadhav.Following this order, it isapparent that Pakistan Government and authorities are in disarray. Nawaj Sharif Government is given ultimatum and is being criticized and pressurized to execute Jadhav. There appears to be mockery of the ICJ judgement. If the judgement of ICJ is legal binding, then why is there a need to pressurize the Government to execute Jadhav, even before the verdict is passed by the apex court? It was already shown the apparent weakness of the court and the need of the hour to give more power and jurisdiction to the court. Although the Security Council, can taken the necessary action if the decision of the ICJ is violated, but hen some member can always veto the decision in the favour of a country. So the ICJ order may be made legally binding without any doubt, if the international peace is to be maintained. The order of the courts should not only be made legally binding, but, the violation of the orders may automatically debar the violating country from international community. The violations may also automatically impose sanctions to the

country which is violating and impose several disabilities which should be exemplary in nature. This is required to continue to promote international peace and order.

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